IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 58 OF 2005

Sou.Sujata P. Polkam .. Petitioner

versus

Pratap Dashrath Polkam .. Respondents

...

Mr.Surel S. Shah for the petitioner.

Ms.Anamika Vichare for the respondent

CORAM : B.H. MARLAPALLE,J

DATED : 26th August 2005.

**ORAL ORDER:-**

1. Heard the learned counsel for the petitioner wife as well as the learned counsel for the respondent husband.

2. The wife has filed this application praying for transfer of Marriage Petition no.403 of 2004 filed by the respondent husband before the Court of

Civil Judge, Sr. Division at Thane to the Court of Civil Judge, Sr.Division at Solapur. In support of this application, she has stated that she is presently staying with her parents at Solapur and her father is a tailor by profession. Her father's financial condition is weak and the husband is aware of the financial conditions of her father and therefore, he has deliberately instituted the proceedings for divorce in the Court at Thane. As per the applicant, she cannot afford to come to Thane on every date fixed by the said Court. Her parents are senior citizens and there is no one to accompany her. She also states that she has no place to stay at Thane and has no money to stay in a hotel.

3. The learned counsel for the applicant wife has placed reliance on the order passed in the case of Sumita Singh vs. Kumar Sanjay and Anr. reported in AIR 2002 SC 396 and the decision of this Court in the case of Anisha Sanjay Hinduja Vs. Sanjay Shrichand Hinduja reported in 2003(3) Mh.L.J. 139. He submitted that when the wife has made out the case of financial difficulties and inconvenience to attend to the Court at Thane, the proceedings pending before the Court at Thane are required to be transferred as

prayed by the wife.

4. The respondent husband has filed an affidavit in reply opposing the application. He has pointed out that the applicant wife has voluntarily left the matrimonial house and deserted him. As per him, the wife has close relatives at Thane as well as Mumbai and in any case, the journey from Solapur to Thane is not inconvenient and does not require overnight stay at Thane or Mumbai when the applicant wife is required to attend to the Court at Thane. The husband has alleged that the application for transfer has been filed belatedly and by way of an after-thought only to delay the final decision in Marriage Petition no. 403 of 2004. A copy of the roznama in the said case is placed on record and it shows that notice was served on the wife on or before 19th January 2005. On 19.1.2005 and 2.2.2005, the wife did not file written statement. He therefore filed an application at Exhibit-8 to proceed further without written statement. On 21.2.2005, the wife did not attend and therefore, "no ws" order was passed. The case was adjourned to 2nd March 2005. The husband submitted the list of witnesses, filed documents and also affidavit. No one was present on

behalf of the wife. On 16th March 2005, the affidavit of witness Devdas in support of the Divorce Petition was filed and no one remained present for the wife. However, she appeared along with an Advocate on 12th April 2005 and filed Vakilpatra of Shri N. Pradhan as an Advocate to represent her. She also filed an application for adjournment. Adjournment was granted and the case was posted on 15th June 2005 as part heard. On 15.6.2005, none appeared before the Court at Thane on behalf of the wife and the husband filed a purshis closing his evidence. The instant application has been presented to this Court on or about 23.6.2005 and not at the first instance.

5. It is further submitted by the husband that after the wife received summons from the Court at Thane in M.P. No. 403 of 2004 by way of a counter blast, she filed H.M.P. No.10 of 2005 u/s.9 of the Hindu Marriage Act 1955 in the Court at Solapur on or about 11th January 2005. The Court at Thane had fixed the case for arguments on 16th July 2005 and written arguments have been filed by husband on account of such ad-interim stay granted by this Court vide order dated 13th July 2005. M.P. No. 403 of

2004 could not be heard and decided finally by the Court at Thane. The parties were married on 17th February 2002 at Solapur and there is no issue out of the said wedlock. An application for transfer of the proceedings filed by the wife is not required to be allowed for asking. Prima facie, it appears that the wife has approached this Court for transfer of the petition from Thane Court belatedly. It also appears that the parties had negotiations for a mutual settlement and the negotiation failed. The husband alleges that the wife has no intention to cohabit with him and for separation, she has been demanding Rs.2 lakhs which is beyond his financial capacity.

6. I am satisfied that this is not a fit case to invoke the discretionary powers to transfer the petition filed by the husband to the Court at Solapur and the case of alleged inconvenience made out by the wife cannot be considered at this stage when the petition filed by the husband has reached the stage of arguments.

7. Application is therefore rejected.

B.H. MARLAPALLE, J